APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,070	06/14/2000	Terry L. Oehrke	1234	7636

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EXAMINER
DELGADO, MICHAEL A

ART UNIT	PAPER NUMBER
2144	5

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/594,070	OEHRKE, TERRY L.
	Examiner	Art Unit
	Michael S. A. Delgado	2144

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 October 2003*.

2a)☒ This action is **FINAL**.　　　2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 October 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3</u>.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 10/14/03 have been fully considered but they are not

persuasive. In response to argument presented as to the re-routing of message. McDowell

discloses an email re-routing system. Here a message that is not deliverable by an old ISP that

inherently has an email server "message server" is re-routed by a re-route server "relay server" to

a new ISP that has an email server "the other message server" so that the message can be

delivered (Col 1, lines 45-60). Medard teaches about automatic protection switching between

nodes (a server has taught by McDowell and applicant is a node on a network) (Col 10, lines 20-

40). The above task is accomplished by using a re-routing approach similar to the one that is

being claimed in claim 1. The limitation that requires that the message server being operation is

covered under Doshi that teaches about polling a destination node (server in this case) to verify

that it is operational (Col 15, line 50 -Col 16, line 15).

2.   In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., DNS Server)

are not recited in the rejected claim1. Although the claims are interpreted in light of the

specification, limitations from the specification are not read into the claims. See *In re Van*

Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

2.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

> 1.   Determining the scope and contents of the prior art.
> 2.   Ascertaining the differences between the prior art and the claims at issue.
> 3.   Resolving the level of ordinary skill in the pertinent art.
> 4.   Considering objective evidence present in the application indicating obviousness
>   or nonobviousness.

3.   Claim 1-4, 7-12 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable

over US Patent No. 6,438,583 by McDowell et al. in view of US Patent No. 6,047,331 by

Medard et al.

In claim 1, McDowell teaches about a method for providing a messaging service on a

computer network, the method comprising the steps of (Fig 1):

(a) routing a message to a messaging server "old ISP email server"(Col 1, lines 45-60);

(b) providing the message to a relay server "re-route server" when the message is

undeliverable to the messaging server (Col 1, lines 45-60); and

But fails to teach (c) re-routing the message from the relay server to the messaging server

when operational.

The concept of re-routing a message to an operable destination via a different path is well

known in the art as disclosed by Medard (Col 10, lines 20-40). It would have been obvious at

the time of the invention for some of ordinary skill to provide a rerouting scheme to insure that

important messages are delivered to their destination despite a failure occurring.

The delivery of important message is crucial in the world of business. To avoid non-

delivery, redundant network elements are deployed as backup means. In this way, if one path is

down there will always be a back up path.

In claim 2, McDowell combines with Medard, teaches about a method of Claim 1 further

comprising:

(d) invoking another messaging server "new ISP email server" when the message is

undeliverable to the messaging server "old ISP email server" in step (c) (Col 1, lines 45-60) (Fig

1).

In claim 3, McDowell combines with Medard, teaches about a method of Claim 2 further

comprising:

(e) routing the message to the other messaging server of step (d) (Col 1, lines 45-60), (Fig

1).

In claim 4, McDowell combines with Medard, teaches about a method of Claim 3:

further comprising (f) storing the message (Col 7, lines 1-10); and

wherein step (e) comprises changing server information of the stored message (Col 7,

lines 1-10).

In claim 7, McDowell combines with Medard, teaches the method of Claim 1 further

comprising:

(d) sending the message to the messaging server in response to step (c) (Covered

in claim 1).

In claim 8, McDowell combines with Medard, teaches about a method of Claim 3 further comprising:

(f) sending the message to the other messaging server in response to step (e) (Col 1, lines 45-60).

In claim 9, McDowell teaches about a computer network for providing a messaging service, the network comprising:

a messaging server "old ISP email server" (Col 1, lines 45-60);

a DNS server operable to route a message to the messaging server (Col 5, lines 30-40) (The DNS function is incorporated in the re-route server); and

a relay server "re-route server" operably connected to the DNS server and the messaging server, the DNS server operable to provide the message to the relay server when the messaging server is inoperable such that the message is undeliverable to the messaging server (Col 1, lines 45-60);

wherein the relay server is operable to re-route the message from the relay server to the messaging server when operational (Covered in claim 1).

In claim 10, McDowell combines with Medard, teaches about a network of Claim 1 further comprising:

another messaging server "new ISP email server", the other messaging server invoked by the relay server when the messaging server "old ISP email server" is inoperable such that the message is undeliverable to the messaging server in response to the re-routing (Col 1, lines 45-60), (Fig 1).

In claim 11, McDowell combines with Medard, teaches about a network of Claim 10 wherein the relay server is operable to route the message to the other messaging server (Col 1, lines 45-60), (Fig 1).

In claim 12, McDowell combines with Medard, teaches about a network of Claim 11 further comprising:

a storage device operably connected to the relay server and the other messaging server, the message being stored in the storage device (Col 7, lines 1-10); and

wherein the relay server is operable to change server information of the stored message to route the message to the other messaging server (Col 7, lines 1-10).

In claim 15, McDowell combines with Medard, teaches about the network of Claim 9 wherein the relay server is operable to send the message to the messaging server in response the re-routing (Col 1, lines 45-60).

In claim 16, McDowell combines with Medard, teaches about a network of Claim 11 wherein the relay server is operable to send the message to the other messaging server in response to routing the message to the other messaging server (Col 1, lines 45-60), (Fig 1).

In claim 17, McDowell combines with Medard, teaches about a network of Claim 9 wherein the messaging server and the relay server are within a first data center (Fig 1).

In claim 18, McDowell combines with Medard, teaches about a network of Claim 10 wherein the messaging server and the other messaging server are in first and second data centers, the first data center remote from the second data center (Fig 1).

In claim 19, McDowell combines with Medard, teaches about a network of Claim 9 wherein the relay server is operable to invoke a process to create another messaging server with a same name and IP address (Col 5, lines 15-40).

Claim 5-6, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,438,583 by McDowell et al. and US Patent No. 6,047,331 by Medard et al in view of US Patent No. 6,182,224 by Doshi et al.

In claim 5 McDowell and Medard teach all the limitation except the action of periodically attempting to deliver a message to the message server.

Doshi teaches about a messaging system in which a destination node is check periodically to determine if destination node is ready to receive a message (Col 15, line 50 -Col 16, line 15). It would have been obvious at the time of the invention for some one of ordinary skill to periodically poll a destination server to insure that it is available to receive a message.

In network operation, there are different types of failures. Some failures are more permanent while others are temporary. In the case of a temporary failure, service can be reinstated as soon as the destination is available without going through the complication of rerouting. To avoid the complication of rerouting, the destination server is poll periodically for predetermine period until there is some certainty that the failure is serious. In this scenario, a more complex rerouting is needed to deliver the message.

In claim 6 and 14, McDowell combines with Medard and Doshi, teaches about a method of Claim 5 further comprising:

(d) invoking another messaging server when the message is undeliverable to the messaging server in step (c) (Col 1, lines 45-60).

In claim 13 the network of Claim 9 wherein the relay server is operable to periodically

attempt delivery of the message from the relay server to the messaging server (Covered in claim

5).

In claim 14, McDowell combines with Medard and Doshi, teaches about a network of

Claim 13 wherein the relay server is operable to invoke a process to create another messaging

server when the message is undeliverable to the messaging server in response to the re-routing

(Col 1, lines 45-60), (Fig 1).

Conclusion

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

5.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

US patent No. 6,108,709 by Shinomura teaches about a data sending apparatus for

message transmission to external receiving terminal - has user interface to message input with

first database for address information and second database for temporary storage of message,

with associated sending mechanism together with alternate forwarding arrangement

US patent No. 6,542,934 by Bader et al., teaches about a non-disruptively rerouting

network communications from a secondary network path to a primary path.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Michael S. A. Delgado whose telephone number is 703-305-

8057. The examiner can normally be reached on 8 AM - 4.30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David A Wiley can be reached on (703)308-5221. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MD

April 8, 2004

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